

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on June 17, 2015
Sacramento, California**

PRESENT:

Art Carter, Chair
Ed Lowry, Member
Judith Freyman, Member
Han Ha, Interim Executive Officer
Jeff Mojcher, Chief Counsel
Ursula Clemons, Presiding Administrative Law Judge
Neil Robinson, Presiding Administrative Law Judge
Aaron Jackson, Industrial Relations Counsel
Autumn Gonzalez, Industrial Relations Counsel
Lee Berlin, Executive Secretary

MINUTES OF JUNE 4, 2015 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the June 4, 2015 Board meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the June 4, 2015 Board meeting.

NEW BUSINESS:

(The Appeals Board hears and discusses new reports presented by staff.)

ACTION: No report.

OLD BUSINESS:

ACTION: No report.

LEGISLATION:

(Review and discuss current legislation which may affect the Appeals Board)

ACTION: No report.

CHAIRPERSON'S REPORT:

(Chair's report of activities and issues affecting the Appeals Board.)

ACTION: No report.

BOARD MEMBERS' REPORTS:

(Hear reports from Board Members on activities and issues affecting the Appeals Board.)

ACTION: No report.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

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STAFFING UPDATE:

ACTION: Interim Executive Officer Ha reported that interviews for the Staff Services Manager position are proceeding. Second interviews are expected before the end of the month and she hopes to fill the position by the middle of July.

The application period for the Hearing Officer I position (for Sacramento) is now closed and interviews will be scheduled in July.

FISCAL UPDATE:

ACTION: The end of the fiscal year is approaching. If all goes as planned next week, the OASIS contract will be processed by year-end.

REPORTS:

ACTION: The Board received copies of the monthly appeals volume reports, the expedited proceedings report and the hearing calendar report.

STAFF REPORTS:

(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

OASIS PROJECT:

ACTION: Business Lead Neil Robinson reported positive news about the OASIS project. The Board received eight proposals and saw additional demonstrations last week in Oakland. After an extensive review and rating of the proposals, the OASIS team announced the intent to award a contract to Journal Technologies for its eCourt software.

PILOT PROJECT(S):

ACTION: PALJ Robinson will present a report at the next meeting.

RULEMAKING:

ACTION: Counsel Gonzalez has made a few minor changes to the rulemaking package based upon advice from DIR. The section of the package that addresses new abatement legislation will now be submitted separately from the rest of the rulemaking package.

LITIGATION UPDATE:

ACTION: Chief Counsel Mojcher reported that he is expecting a decision in the BART case from the Superior Court of Alameda County.

Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

PUBLIC COMMENT:

(Public comment will be entertained during the discussion of each agenda item of the Open Meeting.)

ACTION: No report.

The Board recessed to its closed session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

MCM CONSTRUCTION, INC., 13-R1D2-3851 THROUGH 3854

ACTION: Member Lowry moved that the Board vote to reconsider this matter on its own motion. Member Freyman seconded. The Board voted to reconsider this matter on its own motion.

PLASKOLITE WEST, INC., 14-R3D5-1407 AND 1408

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

SHIMMICK CONSTRUCTION CO., INC/OBAYASHI CORPORATION JV,
12-R3D1-0781

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

PETITIONS FOR RECONSIDERATION:

SAM'S GARDENING, 13-R4D4-2769

ACTION: Member Lowry moved that the Board vote to grant this Petition for Reconsideration. Member Freyman seconded. The Board voted to grant this Petition for Reconsideration.

UNITED PARCEL SERVICE, 14-R2D1-1779

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to grant this Petition for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to grant this Petition for Reconsideration.

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

ALCAUTER INC. dba HEMET AUTO SPA & DETAIL, 15-R3D3-9057

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for

Reconsideration for signature.

PAUL DAVIS RESTORATION, 14-R3D2-3848 AND 3849

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

ORDERS AFTER REMAND:

NONE

ORDERS DISMISSING APPEAL:

ILM EMPLOYMENT GROUP, 14-R3D5-2996 AND 2997

LANCE THUESON CONSTRUCTION, INC., 15-R3D5-0247 AND 0248

WESTERN DIRT CORPORATION, 14-R3D2-3266 AND 3267

ACTION: Member Lowry moved that the Board approve these Orders Dismissing Appeal from Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders Dismissing Appeal from Administrative Law Judges.

MATTERS INVOLVING LATE APPEALS:

(These are matters such as orders dismissing appeal, orders granting leave to file late appeal and orders denying leave to file late appeal)

DIONYSUS DREAM INC. DBA NEWPORT MESA CARWASH & SERVICE,
15-R6D5-9087

ACTION: Member Lowry moved that the Board vote to reconsider this matter on its own motion. Member Freyman seconded. The Board voted to reconsider this matter on its own motion.

MATTERS HELD OVER FROM PREVIOUS MEETINGS:

(If the Board is unable to conclude its deliberations and/or if any matter(s) is (are) put over from a previous meeting, they will be further discussed.)

NONE

MATTERS PENDING RECONSIDERATION:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)

1. A TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 11-R5D1-1895 (ER)
2. A TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 11-R5D1-1895 (DOSH)

3. B.A.R.T., 11-R2D2-3137 THROUGH 3139 (ER)
4. BENCHMARK CONTRACTORS, INC., 14-R4D1-1048
5. CHEVRON U.S.A. INC., 13-R6D3-0655 THROUGH 0662
6. CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
7. CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364
8. ECHO ALPHA INC. ET AL, 14-R3D1-0802 THROUGH 0804
9. L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822
10. McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406
11. McCARTHY BUILDING CO., INC., 12-R1D4-3458
12. NATIONAL DISTRIBUTION CENTERS, LP, 12-R6D2-0391
13. GONZALO OLASCOAGA DBA GONZALO OLASCOAGA, 13-R6D5-2097
AND 2098
14. SIERRA FOREST PRODUCTS, 09-R2D5-3979
15. SKYLINE HOMES, INC., 15-R3D3-9035
16. TREASURE ISLAND MEDIA, INC., 11-R6D1-1093 THROUGH 1095
17. TRI-STATE STAFFING, 12-R6D2-0378
18. HERMAN WEISSKER, INC., 13-R3D1-3279

LEGISLATION:

PENDING LITIGATION:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

NONE

SUPERIOR COURT:

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1. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
3. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
4. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
5. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
6. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
7. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
8. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
9. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
10. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
11. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
12. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
13. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
14. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
15. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
16. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
17. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575 (12-R5D1-337)
18. CA PRISON INDUSTRY AUTHORITY, 13 C 0327 (08-R2D5-3426 ~ 3429)
ACTION: The Board discussed this matter.
19. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)
20. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 34-2014-80001749 (2008-R2D1-3414 THROUGH 3418)

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21. SHIMMICK-OBAYASHI, 34-2014-80001750 (08-R3D3-5023 THROUGH 5025)

22. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)

23. BAY AREA RAPID TRANSIT DISTRICT, RG14715710 (10-R1D1-3056 THROUGH 3058) (DOSH)

ACTION: The Board discussed this matter

24. BAY AREA RAPID TRANSIT DISTRICT, RG14715720 (10-R1D1-3056 THROUGH 3058) (3rd Party)

ACTION: The Board discussed this matter

25. BRUNTON ENTERPRISES DBA PLAS-TAL MFG CO., 34-2014-80001817 (09-R6D2-2238 ~ 2241)

26. WEST VALLEY CONSTRUCTION, INC., 34-2014-80001832 (12-R2D5-3526)

27. BARNARD IMPREGILO HEALY JV, CPF-14-513697 (14-R5D1-9013)

28. IRWIN INDUSTRIES, BS14-9634 (12-R4D3-3276 & 3277)

29. TL PAVLICH CONSTRUCTION, INC., BS14-9660 (11-R3D6-1303 THROUGH 1310)

30. DAVIS DEVELOPMENT CO., 34-2014-80001892 (10-R3D1-3360 THROUGH 3362)

31. MORROW MEADOWS CORP., BS151385 (09-R3D3-2295)

32. FEDEX GROUND PACKAGING SYSTEM, INC., CIVDS1415696 (13-R3D1-1220)

33. KEY ENERGY SERVICES, INC., S-1500-CV-283958, EB (13-R4D3-2239 ~ 2242)

34. KDTD, INC. DBA KD DEVELOPMENT, INC., 37-2015-00003550-CU-WM-CTL (14-R3D2-1935 & 1936)

35. HHS CONSTRUCTION, 34-2015-80002052 (12-R3D2-0492 THROUGH 0497)

APPELLATE COURT:

1. XL CONSTRUCTION, C074514, 34-2009-80000300 (08-R1D2-1191 THROUGH 1193)

2. AC TRANSIT, A142799, RG13-687314 (08-R1D4-0135)
3. THYSSENKRUPP ELEVATOR CORPORATION, C077115, 34-2013-80001456 (11-R2D1-2217 ~ 2219)
4. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, C078953, 34-2011-80000965, (10-R6D2-0188 THROUGH 0191)

ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

3 C JR PAINTING INC. DBA FRESHCOAT PAINTERS, 14-R2D5-2363 AND 2364
FRANK JACK ACOSTA, 15-R2D3-1385 THROUGH 1387
ALUMISTAR INC. DBA ALUMINUM CASTING COMPANY, 14-R6D2-3509
THROUGH 3515
AMLAND CORPORATION, 15-R3D1-0379 AND 0380
AMY'S KITCHEN, 15-R1D5-0717 AND 0718
APIO, INC., 15-R4D3-0275
ARYSTA HOLDING IV LLC, 14-R3D1-1196 AND 1197 *
BAKERSFIELD CITY PUBLIC WORKS, 15-R4D7-0424 AND 0425
BAY SHIP & YACHT CO., 15-R1D4-1740
BLH CONSTRUCTION, 15-R3D5-0310 THROUGH 0312
BONG G CONSTRUCTION, 14-R4D1-3861 AND 3862
BRIAN POTTER CONSTRUCTION, 15-R6D5-1044
BROWN CONSTRUCTION INC., 15-R6D1-1153
BURLINGAME INDUST. INC DBA EAGLE ROOFING PRODUCTS,
15-R3D3-1050 AND 1051
CALIFORNIA PROFESSIONAL ENGINEERING, INC. DBA CPEE, 14-R3D2-2665
CARONE & COMPANY, INC. DBA DIABLO VALLEY ROCK, 14-R2D2-1523
AND 1524
C & D VENTURES INC. DBA GOLD COAST DAIRY, 14-R4D3-1049 AND 1050
CENTRAL CONCRETE SUPPLY COMPANY, INC., 15-R1D4-0838 AND 0839
CH2M HILL ENGINEERS, INC., 14-R1D2-1660 THROUGH 1663
CHOICE LITHOGRAPHICS, 15-R3D1-0377 AND 0378
CINEMARK, INC., 14-R4D3-4218 AND 15-R4D3-1653 *
CIRCLE M CONTRACTORS, 14-R3D1-1175 AND 1176
CITY OF BURBANK PUBLIC WORKS DEPT., 15-R4D3-0219
CM&B, INC. DBA MAUCK SHEET METAL, 15-R6D1-1097 AND 1098
COASTAL HARVESTING, INC., 15-R4D3-0056
COLLINS ELECTRICAL COMPANY, INC., 13-R2D1-1379
DEMARIA ELECTRICAL MOTOR SERVICE, 15-R3D5-0401
DAVEY TREE SURGERY COMPANY, 15-R3D1-1128
DIABLO CONTRACTORS, INC., 14-R2D5-2994
DOT COPY INC. DBA DOT GRAPHICS, 14-R4D3-4153 THROUGH 4156

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EL POLLO LOCO, INC, #5789, 14-R4D4-4221 AND 4222
EPLASTERING, INC., 14-R3D1-1220 and 1221
EQUITY RESIDENTIAL SERVICES LLC, 15-R1D2-0849
EXCLUSIVE LANDSCAPES, 15-R6D5-0128
FAMILY TREE SERVICE, INC., 14-R2D1-3774
FORTUNA UNION HIGH SCHOOL DISTRICT, 15-R2D3-0951
FULCRUM INDUSTRIES, INC., 15-R2D1-0269
FULL SERVICE SCAFFOLD, 15-R1D5-1306 AND 1307
FUSHIN RESTAURANT VENTURES INC. DBA DENNY'S #7237, 14-R2D1-3977
GARFIELD BEACH CVS LLC, 14-R3D1-2596
GRANITE CONSTRUCTION CO., 14-R4D3-1986
GREG'S PETROLEUM SERVICE, 15-R4D7-0884
GUTIERREZ MANUFACTURING INC., 15-R6D2-1062 THROUGH 1066
HAROLD MOORE CO., INC., 14-R6D2-3864 THROUGH 3868
HAYWARD SISTERS HOSPITAL DBA ST. ROSE HOSPITAL, 15-R1D4-1639
INDOOR COMFORT SERVICES, INC., 15-R1D5-1107 THROUGH 1109
INGA HOVHANNESYAN DBA NOAH'S ARK CUISINE, 14-R6D5-3957
JACOBS FIELD SERVICES NORTH AMERICA, INC., 15-R5D2-1152
JUEN'S ROOFING & CONSTRUCTION INC., DBA ALL SEASONS,
15-R4D3-0057 AND 0058
KAREO, 14-R3D1-3980
KUEBLER'S FURNITURE, INC., 15-R2D3-0727
LUCKY'S GLASS, LLC., 14-R3D5-1937 AND 1938
MALIBU LANDSCAPING, 14-R4D3-3314
MEZA PALLETS, 14-R3D3-2712
MFB ENG INC., 14-R4D1-2808 AND 2809
MILLCREEK CONSTRUCTION GROUP, INC., 15-R1D5-0580 AND 0581
MLS LABOR CONTRACTING, 14-R4D7-4036
MONTEREY SCULPTURE CENTER, 15-R6D1-0426 THROUGH 0431
NAPA WOODEN BOX CO INC., 15-R1D5-0266 THROUGH 0268
NOR CAL PAINTING & WATERPROOFING, INCORPORATED, 15-R1D4-1551
THROUGH 1557
NOR CAL ROOFING, 15-R2D3-0994
OCEANSIDE UNIFIED SCHOOL DISTRICT, 15-R3D2-0073 THROUGH 0075
OC RAMPS, INC., 14-R3D1-3761
OLAM SPICES AND VEGETABLES, 14-R3D2-4182 AND 4183
OLD DOMINION FREIGHT LINE, INC., 14-R2D1-0249 AND 0250 AND
15-R2D1-1654
PAINTERS PLUS INC., 15-R2D1-0368 AND 0369
PAR ELECTRICAL CONTRACTORS INC., 14-R3D1-2785
PCC ROLLMET INC., 14-R3D1-2955
PHILIPPINE MEDIA, INC., 14-R4D1-1626 AND 1627
PHILLIPS 66 COMPANY, 15-R6D4-1060 AND 1061
PHOENIX TEXTILES INDUSTRIES INC., 15-R6D2-1253 THROUGH 1259
PLUMBERS & STEAMFITTERS LOCAL UNION NO. 159, 14-R2D2-3107
QUALITY CUSTOM DISTRIBUTION SERVICES, INC., 14-R4D4-1939

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RBC TRANSPORT DYNAMICS CORP, 15-R3D1-0746 AND 0747
RED BLUFF AUTO CLINIC, 15-R2D3-0699
ROBERT MICHAEL LTD, 15-R6D2-0362 THROUGH 0364
SANTORI WOODWORKING INC., 15-R6D2-0410 THROUGH 0415
SCHENKER LOGISTICS DBA DB SCHENKER, 15-R4D4-0181
SECURE STAFF, 14-R4D1-2161 THROUGH 2163
SEAN CLINES FRAMING, INC., 14-R2D5-1647 AND 1648
SHANE WOODS JOHNSON CONSTRUCTION, INC., 14-R2D4-3856
STUART DEAN, 13-R4D1-3576 AND 3577
SUPERIOR DUCT FABRICATION, INC., 14-R4D4-3004
THE OKONITE COMPANY, 15-R4D3-1052 AND 1053
TJX CORPORATION DBA MARSHALLS, 14-R4D1-1834 THROUGH 1836
TOTAL-WESTERN, INC., DBA GENE WATSON CONSTRUCTION, 14-R4D7-2756
TRANSITAMERICA SERVICES, INC., 13-R1D3-1735 THROUGH 1737
UNITED PARCEL SERVICE, 13-R4D1-0648
UPS, 15-R4D4-1465
VALLEY PRIDE, INC., 13-R6D5-3326
VALLEY SIDING INC / VSI, 15-R2D3-1384 *
VERANDA LANDSCAPING, INC., 14-R2D2-3431
V F CONTEMPORARY BRANDS, INC., 15-R4D1-0055
VILLA PARK ORCHARDS ASSOCIATION, 15-R4D3-0467
WB LANDSCAPE, INC., 15-R6D5-0287
WC STAFFING INC., DBA WEST COAST STAFFING, 13-R6D2-3522 AND 3523
WESTERN FOODS, LLC, 15-R2D1-0949 AND 0950
WORKFORCE ENTERPRISES, 14-R4D4-3043

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended.

PERSONNEL:

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 10:57 a.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. The meeting was adjourned at 10:58 a.m.